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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JASON COX,

8 Plaintiff,

9 v.

No. C12-5421 BHS/KLS

10 DAN PACHOLKE, PAT GLEBE, LIZA
11 RHORER, TERA MCELRAVY,
12 DENNIS DAHNE, MARILYN
13 MALDRICH, KATELYN
14 DAUGHERTY, TAMARA ROWDEN,
15 G. PRESSEL, WASHINGTON STATE,
16 WASHINGTON DEPARTMENT OF
CORRECTIONS, WASHINGTON
DEPARTMENT OF ENTERPRISE
SERVICES, JOHN AND JANE DOES
1-10,

Defendants.

REPORT AND RECOMMENDATION
Noted For: JUNE 15, 2012

17 This civil rights action has been referred to United States Magistrate Judge Karen L.
18 Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Plaintiff Jason Cox is
19 presently confined at the Stafford Creek Correction Center in Aberdeen, Washington. Under
20 separate Order, Plaintiff has been granted leave to proceed *in forma pauperis*. Plaintiff has been
21 directed to provide service addresses of the named defendants on or before June 13, 2012 so that
22 the Court may direct service of his complaint. ECF No. 3.

23
24 At the time he filed his complaint, Plaintiff also filed a Motion for Temporary
25 Restraining Order. ECF No. 6. In this pleading, Plaintiff requests that the Court order a
26 temporary restraining order *without notice* to the Defendants “to allow plaintiff to go forward

1 with his meritorious case without fear of threats, intimidation, and retaliation in the interest of
2 justice.” *Id.* Defendants have not been served with this motion. The undersigned recommends
3 that the Plaintiff’s motion be stricken from the Court’s docket at this time. The Court does not
4 reach the merits of Plaintiff’s motion.

5 **DISCUSSION**

6 Under Federal Rule of Civil Procedure 65(a)(1), no preliminary injunction can be issued
7 without notice to the opposing party. A temporary restraining order may be granted under Rule
8 65(b), but only if:
9

- 10 1) it clearly appears from specific facts shown by affidavit or by the verified
11 complaint that immediate and irreparable injury, loss or damage will result
12 to the applicant before the adverse party or that party’s attorney can be
heard in opposition, and
- 13 2) the [applicant] certifies to the court in writing the efforts, if any, which
14 have been made to give the notice and the reasons supporting the claim
that notice should not be required.

15 If Plaintiff seeks relief from the Court, he must set forth his requests in a pleading or
16 motion and that he must serve copies of all pleadings and motions on all Defendants through
17 their counsel of record pursuant to Fed. R. Civ. P. 5(b)(1). Pursuant to Fed. R. Civ. P. 5(d),
18 Plaintiff is also required to attach and file a certificate of service stating that he has served all
19 Defendants with the pleading and/or motion every time he files and serves a document. Unless
20 otherwise ordered by the Court, all motions will be decided without oral argument and parties are
21 not to appear on the date the motion is noted unless directed. CR 7(b)(4).
22

23 Accordingly, the undersigned recommends that Plaintiff’s motion (ECF No. 6) be
24 **stricken from the Court’s docket.** Plaintiff may file a motion for temporary restraining order
25 and serve it on all Defendants after Defendants have been served with his complaint and have
26 entered an appearance in this matter. Plaintiff should keep in mind that any issues raised in any

1 such motion must be related to the issues raised in his complaint and he must establish the
2 following: (1) a likelihood of success on the merits, (2) a likelihood of irreparable injury to the
3 plaintiff if injunctive relief is not granted, (3) a balance of hardships favoring the plaintiff, and
4 (4) advancement of the public interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129
5 S.Ct. 365, 376, 172 L.Ed.2d 249 (2008) (quoting *Amoco Prod. Co. v. Gambell*, 480 U.S. 531,
6 542, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)). If Plaintiff does re-file his motion, he must also
7 file a certificate of service stating he has served all Defendants, through their counsel, with the
8 motion. The motion may be scheduled on the Court's calendar for the third Friday after filing
9 and service of the motion.

11 CONCLUSION

12 The undersigned recommends that the Plaintiff's motion for preliminary injunction (ECF
13 No. 6) be **stricken** from the Court's docket. The Court does not reach the merits of the
14 Plaintiff's motion.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
16 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.
17 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.
18 *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
19 Clerk is directed to set the matter for consideration on **June 15, 2012**, as noted in the caption.

20 **DATED** this 24th day of May, 2012.

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23 
24 Karen L. Strombom
25 United States Magistrate Judge
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